



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Twenty-fifth session**

Summary record (partial)* of the 331st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 31 August 2016, at 3 p.m.

Chair: Mr. Brilliantes

Contents

Consideration of reports submitted by States parties under article 73 of the Convention
(continued)

Initial report of Nicaragua

* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.35 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention (continued)

Initial report of Nicaragua (CMW/C/NIC/QPR/1; and text distributed in the meeting room in Spanish only)

1. *At the invitation of the Chair, the delegation of Nicaragua took places at the Committee table.*
2. **Mr. Estrada Román** (Nicaragua), introducing his country's initial report (text distributed in the meeting room in Spanish only), said that human rights were indissolubly linked with the Government's strategic objectives, which included sustained economic growth, poverty reduction, better working conditions, lower social inequality and an improved quality of life. It was imperative for all States to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in particular those that, despite claiming to uphold peace throughout the world, instead created instability, provoked war and undermined national sovereignty, while failing to address the structural causes of migration. The promotion by such States of discriminatory, xenophobic and inhuman policies to target migrants in irregular situations should not be tolerated.
3. Nicaragua had ratified the Convention in October 2006. The national laws and the international instruments to which Nicaragua was a party formed the legal basis on which the current Government had been building since 2007. The Government was committed to human rights, peace and human solidarity and, in that context, devoted special attention in its public policies to the community, the family and the person as a human being. The current Government was endeavouring to reaffirm the rights and values of the Nicaraguan people after many years of neo-liberal rule.
4. In line with its international obligations under the Migrant Workers Convention and other human rights treaties to which it was a party, Nicaragua guaranteed the legal security of migrant workers and their families under its national law, including its Constitution, which had undergone reform in 2014. All persons were equal before the law and had the right to equal protection; therefore all foreigners, including migrant workers and their families, enjoyed the same rights, guarantees and protections as Nicaraguan citizens, including the rights to life, protection against bodily harm, health and education. The Government had introduced a family and community health model and, in 2007, had reinstated free public education. Nicaraguan embassies and consulates offered protection to Nicaraguan workers who migrated to other countries.
5. The Ministry of Labour offered legal assistance on work-related issues and facilitated the process by which the employment contracts of migrant workers were certified, as was required under Nicaraguan migration law. Refugees were entitled to the same assistance as migrant workers. Articles 10, 16, 17 and 167 of the General Act No. 761 of 2011 on Migration and Immigration dealt with the right of migrants to work. The Act included legal safeguards for migrant workers' rights and the rights of their families, their access to diplomatic and consular representation and their right to receive pay. It also set out the procedure according to which they could obtain administrative permission to work and enumerated their rights in the event that they were subject to expulsion.
6. No bilateral or multilateral agreements on migration between Nicaragua on the one hand and Costa Rica, Panama, Mexico or the United States of America on the other were currently in force. Pursuant to article 15 of the Labour Code, it was forbidden for Nicaraguan workers to sign contracts in Nicaragua for work to be completed abroad.

without the permission of the Minister of Labour. Private recruitment agencies were also forbidden from offering workers such contracts.

7. At the national level, the oral labour procedure had been incorporated into the judicial system, a programme to eradicate and prevent child labour and protect adolescent workers had been implemented and a law on labour inspections had been approved. A national plan had been developed to promote the creation of decent employment for young persons in order to support their social inclusion. The procedures required for foreign workers to obtain permission to work in Nicaragua were published on the relevant authority's website.

8. Nicaragua had ratified 62 international instruments, of which 56 had entered into force, including the 8 fundamental International Labour Organization (ILO) conventions. It had recently ratified the Maritime Labour Convention, 2006, the ILO Domestic Workers Convention, 2011 (No. 189) and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

9. Nicaragua had implemented a successful model to guarantee access to justice, and there were currently no delays in the judicial process. The social context had improved as a result of better understanding between communities, and the rate of violence had decreased in relation to that of other Central American countries. Access to justice was guaranteed throughout the country for both Nicaraguan citizens and foreign nationals, who had unfettered access to an established nationwide procedure. The creation of the National Labour Appeals Court and the implementation of the oral labour procedure had also served to improve access to justice, and the Constitutional Division of the Supreme Court had adjudicated each case of alleged constitutional violation referred to it in conformity with the provisions of the *Amparo* Act. Pursuant to article 51 of the Code of Criminal Procedure, it was possible for individuals who considered their rights to have been violated to institute criminal proceedings directly and independently before judicial bodies.

10. Although it was not part of the Government's policy to encourage citizens to migrate, the Ministry of Labour was — in conjunction with the International Labour Organization, the Spanish Agency for International Cooperation and the International Organization for Migration — running a project that included a campaign to raise awareness among Nicaraguans who migrated for employment to Costa Rica of the rights to which they were entitled as migrant workers. A bilateral agreement between the two most powerful workers' organizations in Costa Rica and Nicaragua had been signed in order to defend the human and labour rights of migrant workers and to spread information and awareness of the social, economic and labour rights of workers in Costa Rica, including migrant workers, who made up a large percentage of the Costa Rican labour force. Those efforts would also serve to highlight the importance of combating the evasion by employers of their obligation to make social security contributions, the underreporting of wages, the denial of the freedom to form trade unions and wage insecurity.

11. **Mr. Ceriani Cernadas** (Country Rapporteur) said that, although the list of issues had been transmitted to the State party more than one year previously, the State party's initial report had been submitted only a few hours before the meeting, which had prevented the Committee from giving it due consideration. Furthermore, the report failed to respond to the list of issues in a satisfactory manner, and the composition of the delegation had not included any officials who were directly involved in formulating migration policy in the State party.

12. While welcoming the reform of the State party's migration legislation in 2011, which made explicit reference to the Convention as its foundation, he noted that national laws did not seem to provide for any alternatives to detention for migrants in an irregular situation. Detention should be an extraordinary measure and used only as a last resort. He

asked whether there were any mechanisms that allowed migrants to appeal judicial decisions issued against them. The delegation should clarify the provision that listed "proven vagrancy" as a ground for deportation. He wished to know whether there were any policies, measures or programmes that addressed the root causes of migration among Nicaraguan citizens and that encouraged the latter's reintegration upon returning to the country.

13. The delegation should comment on reports of the ill-treatment and excessive use of force against Cuban and, more recently, Haitian and African migrants attempting to enter Nicaragua on their way to destination countries farther north. He requested additional information about the recent case in which some dozen Haitians had died while attempting to cross the border into Nicaragua. He asked what measures had been taken to identify them and to inform their families. Had the families been consulted before the bodies of the deceased had been cremated?

14. He would appreciate an account of the process used to collect qualitative and quantitative statistical data on migration in relation to both Nicaraguans who migrated abroad and foreigners who migrated to Nicaragua. He asked why Nicaragua had not participated in the most recent meetings of the Regional Conference on Migration; why it had not signed any bilateral agreements with the main countries of destination of Nicaraguan migrants; and why responsibility for consular assistance services had recently been transferred from the Ministry of Foreign Affairs to the Ministry of the Interior.

15. He wished to know whether the Government had taken any measures to recognize the right of Nicaraguans living abroad to vote in elections. He requested further information about migrant detention centres in the country, including conditions of detention, and asked whether representatives of civil society organizations were permitted to visit such centres. Were migrants also detained in other facilities, such as police stations?

16. Additional clarification should be provided about the practice of detaining Nicaraguan migrants who had been deported from other countries and returned to Nicaragua. It would be useful to know whether the National Commission on Refugees and the Commission on Migrant Support were fully operational and, if so, what kinds of activities they carried out. He asked what measures the Government had taken to locate and identify missing Nicaraguans who had disappeared in Mexico while attempting to migrate. What was being done to inform and protect the families of those victims and to ensure their access to the justice system?

17. **Mr. Núñez-Melgar Magaña** (Country Rapporteur) asked whether the State party was considering establishing mechanisms that would open up markets abroad and enable the orderly and informed migration of Nicaraguans who wished to take up private employment in another country in jobs not necessarily governed by public bilateral agreements. He asked whether the Costa Rica-Nicaragua co-development project included any training or counselling services for migrants.

18. He wished to know whether human trafficking constituted an offence in the Criminal Code; what measures had been adopted to combat it and to assist and protect trafficking victims; and whether such measures cut across all sectors relating to migration. He asked whether police officers and border guards received training that would help them combat that scourge. He wished to know more about the role Nicaraguan consular services played in promoting and protecting the rights of Nicaraguan migrants. Such a role should include preventing human trafficking, helping communities of Nicaraguan nationals living abroad to preserve their culture, providing legal assistance to Nicaraguans in detention in other countries and providing emergency assistance to Nicaraguan victims of violence abroad.

19. Additional information should be provided about the conditions of detention of migrants in an irregular situation in Nicaragua, the duration of their detention and the procedures governing it. The delegation should comment on reports that migrants were being detained in the State party for up to three months. He asked whether there were any bilateral agreements in place concerning the return of migrants by land. He also asked whether there were administrative or legal proceedings available to migrants who wished to lodge an appeal against a deportation order.

20. Noting that border areas had become rife with crime, including both human trafficking and drug trafficking, he asked whether the militarization of the border could be expected to improve that situation, or whether it was simply a response to an issue of national security. He would appreciate receiving details about programmes to help returning migrants reintegrate into society.

21. **Ms. Landázuri de Mora** said that she would welcome more information, including statistical data, on the consular services and types of assistance provided to Nicaraguans abroad, as well as information on the remittances received by Nicaragua, including their origin and any policies regarding them. The delegation should also give further explanation of the validity, scope and application of the bilateral and multilateral agreements concluded by the State party, including the free movement agreement it had signed with Guatemala and Honduras, which permitted mobility for the purposes of trade and tourism and which might encourage larger labour migration flows. She would be interested to learn more about the work done by Nicaragua and El Salvador on a temporary migration mechanism that would protect migrants from both countries and allow them to regularize their immigration status.

22. She asked whether the State party had received inputs from civil society organizations or NGOs working in the sphere of migration in its efforts to estimate how many migrants from other countries were in transit in its territory. She was interested to know more about the crisis involving migrating Cuban nationals, given that it had begun in 2015 and still not been resolved. Many of those migrants had been subjected to mass expulsion from Nicaragua after crossing the Nicaraguan border with Costa Rica, while others had managed, clandestinely, to reach Honduras. She wished to know whether Nicaragua had assisted those clandestine migrants, given the fact that, since they were unrecognized by States, they were among the most vulnerable of migrants and often fell into the clutches of trafficking networks. What strategies and policies had the Government adopted or did it plan to adopt in order to protect such persons and guarantee respect for their human rights?

23. **Ms. Ladjel** requested details concerning the State party's efforts to promote and disseminate the Convention throughout the country and asked which authority was entrusted with that responsibility. Noting that the State party had devised a plan on decent youth employment for the period 2012-2016 and a strategic plan for the prevention of child labour for the period 2007-2016, she asked what impact those plans had had on children who were sent out to work without having reached the minimum age of employment and on young people who decided to migrate, despite all the risks such a decision entailed.

24. The delegation should explain why, despite the existence of the National Council for Migration and Immigration that was designed to safeguard their interests, Nicaraguans who emigrated did not enjoy the right to vote. She expressed concern at reports that restrictions had been placed on the visits to detention centres carried out by civil society organizations, whereas the purpose of such organizations was to support Government efforts and provide a public service. She requested an explanation of the State party's policy in that regard. Lastly, she asked why assistance for child victims of trafficking was limited to those aged 14 and under and whether the Government used a different definition of childhood than the one that was commonly accepted around the world.

25. **Ms. Castellanos Delgado** said that she wished to highlight the importance of the Central American Integration System, whose efforts were supported by all Central American countries, regardless of their differing ideologies and challenges. Integrated efforts in the spheres of development and education, inter alia, were required to alleviate the suffering of children in the region and to provide them with the help they needed, since they represented the future of their countries. She expressed concern that, with migration at such high levels, a large part of the population would soon be living abroad, while others would have returned with disabilities, presenting difficulties for the country's progress and development. It was imperative for Central America to engage in the integration process in order to secure its future in a way that respected the policies of each country while at the same time promoting solidarity, resolving development problems and establishing peace. She would be grateful if the delegation could provide information and statistics on the return of children and young people and on returning migrants who had sustained disabilities, since the data provided were incomplete.

26. **Mr. Kariyawasam** said that he had not been able to read the report because it had been delivered late and was available only in Spanish. Nevertheless, he noted that Central America had been struggling for some time with the irregular transit of the children of migrant workers through the region and that State responses had been fragmented, with each country seeking to address its own concerns. He would be interested to learn what talks Nicaragua had held with receiving countries, what action it had taken to deal with such children and whether any bilateral agreements concerning them had been concluded. He would also welcome information on the types of care provided to returning children, including children who had been subjected to trafficking, such as access to dedicated reintegration centres and social and psychological counselling, as well as on any measures that had been taken to prevent that phenomenon.

27. **The Chair** suggested that a 15-minute recess might be taken so that the delegation could compose its responses and seek additional information if necessary.

28. **Mr. Estrada Román** (Nicaragua) said that, while 15 minutes might be sufficient to convey a request for information to his capital, it was unlikely that it was sufficient for receiving adequate responses. He asked whether the Committee could grant the State party a longer interlude, so that the delegation could provide structured answers, in keeping with the Government's instructions, at the next meeting with the Committee.

29. **The Chair** said that the delegation's request was not in keeping with the Committee's customary procedures for the examination of States parties' reports. States parties usually had a number of qualified persons ready to respond to each question and generally did not need longer than 15 minutes to consult with authorities in their capital. Consequently, the request would have to be referred to the Committee as a whole. He suggested that Committee members should put additional questions to the delegation, including follow-up questions, so as to allow the delegation to transmit all of them to the Nicaraguan Government at one time.

30. **Ms. Dzumbur** said that it was important for all States parties to follow the same procedures and to receive the same treatment, since altering them risked setting a precedent that might adversely affect the Committee's future work. Nicaragua had the same responsibilities under the Convention as other States parties, and the session had been announced with sufficient lead time to allow the State party to prepare its replies. If the dialogue was to continue, the Committee should be given an explanation as to why the report had not been submitted on time and why the delegation had not been able to give answers, so that that information could be included in the Committee's concluding observations. Although she had doubts about whether the Chair's suggestion would allow for a proper dialogue with the State party, she was nevertheless prepared to continue the dialogue, while expressing the hope that such a situation would not be repeated.

31. **The Chair** said that the Committee as a whole should reach a consensus before proceeding with his suggested course of action, whose objective was for the State party to present all its replies to the Committee's questions at the Committee's next meeting.

32. **Mr. Ceriani Cernadas**, supported by **Ms. Castellanos Delgado**, said that he endorsed the Chair's suggestion, since the Committee needed the best information it could get in order to complete its review of the State party. Following that suggestion would allow the Committee to draw up at least the most important of its recommendations, thereby enabling the State party to move forward in protecting the rights covered by the Convention. Although such a course of action was not ideal for establishing an interactive dialogue, he recalled that a similar situation had arisen with Ghana during the Committee's twenty-first session.

33. **Mr. El-Borai** said that he preferred to wait until he had received replies to the first round of questions before turning to more specific legal issues. It was unclear how the Committee's follow-up questions would be dealt with, given the limited time available.

34. **The Chair** said that Committee members might wish to put all of their questions to the delegation at the present meeting in order to allow the delegation to consult with its national authorities overnight concerning the State party's replies. Should the delegation have to refer back to its capital concerning any follow-up questions, that fact would be reflected in the Committee's concluding observations.

35. **Mr. Estrada Román** (Nicaragua) said that the presence of his delegation before the Committee reflected not only the State party's desire to comply with its obligations under the Convention but also an expression of its political will to begin a dialogue with the Committee that was not limited to the present meeting. Although he might not be able to answer all the Committee's questions, with the help of his Government, he would be able to answer the most important ones in as transparent a fashion as possible.

36. **The Chair** said that, if he heard no objection, he would take it that the Committee wished to follow the precedent set by the Committee's consideration of the initial report of Ghana at its twenty-first session.

37. *It was so decided.*

38. **Ms. Dzumhur** requested information on the functioning, general effectiveness and financial and operational independence of the Office of the Human Rights Advocate. She asked whether the Office had been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and whether the delegation could provide details regarding access to assistance from the Public Defender Service for persons requiring legal aid. She asked for information on the level of presence of the Nicaraguan diplomatic service in Costa Rica and the United States and whether Nicaragua had concluded bilateral agreements with those two destination countries. If it had not, she would welcome an explanation as to why not. She wished to know what factors were responsible for the increase in the number of sexual abuse offences in Nicaragua.

39. **Mr. Ceriani Cernadas** said that he would appreciate receiving information on the institutional framework that had been set up to implement the national migration policy and give effect to the rights protected by national legislation and the Convention. In that connection, he asked whether an inter-agency mechanism had been established to coordinate the myriad issues relating to migration, including entry, movement, exit, labour rights, health, housing, employment conditions, family reunification and the protection of women migrants.

40. In light of reports that one of the responses to overcrowding in migrant detention centres had been to expedite expulsion procedures, he asked to what extent the foreign nationals held in such centres had been ensured the enjoyment of procedural guarantees

during those expedited procedures. He asked whether any measures had been taken by the national authorities to assist migrants and asylum seekers who were fleeing violence in countries to the north of Nicaragua and who were either residing in Nicaragua or in transit through it on their way South to Costa Rica or Panama.

41. He asked whether mechanisms had been set up to encourage dialogue and active cooperation between the State and civil society actors engaged in efforts to protect the rights of Nicaraguan migrants abroad and those of foreign migrants and asylum seekers residing in Nicaragua. The delegation should provide information on the alleged refusal of humanitarian organizations to assist migrants who were blocked at the southern border of Nicaragua.

42. **Mr. Ünver** asked what measures the national authorities had taken to maintain contact with Nicaraguan nationals residing abroad and to encourage them to participate in Nicaraguan political life.

43. **Ms. Castellanos Delgado** asked whether any public policies on remittances sent by Nicaraguan citizens living abroad had been put in place and whether any measures had been taken to instruct migrant workers about the importance of such contributions to the development of Nicaragua as a whole.

44. **Ms. Landázuri de Mora** asked how many Nicaraguan nationals residing in the United States had been granted "Temporary Protected Status" by the authorities of that country since the launching of the initiative; how many Nicaraguan citizens currently held that status; and what were the positive and negative aspects of possessing a temporary protected status designation in the United States.

45. **The Chair**, speaking as a member of the Committee, asked which specific authority in Nicaragua was responsible for overseeing the implementation of the Convention.

The meeting rose at 5.30 p.m.